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VIA HAND DELIVERY

December 10, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Oral *Ex Parte* Presentation
CC Docket No. 01-337

Dear Ms. Dortch:

On December 9, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert and O'Connor, P.C., met with Marsha MacBride Chief of Staff, and Chris Libertelli, Legal Advisor, Office of the Chairman, to discuss the above-referenced docket.

In the meeting, consistent with AOL's Reply Comments filed April 22, 2002 in CC Docket No. 01-337, we discussed the following points in reference to the issues raised by SBC in its Petition for Expedited Ruling That It Is Non-Dominant in Its Provision of Advanced Services and For Forbearance from Dominant Carrier Regulation of Those Services.

We explained first that **as** a factual matter, even though there is competition for retail information services, there is still not competition for wholesale broadband transmission services. Based on the facts and the record before it, we urged the Commission not to classify the BOCs as non-dominant, and instead to maintain the requirements that BOCs make available the transmission services to unaffiliated ISPs on the same rates, terms and conditions that the BOC provides itself. We also emphasized that the Commission must ensure transparency in order to deter anticompetitive behavior and to enhance enforcement. We noted that the core principles of nondiscrimination and transparency underlying the *Computer Inquiry* rules are valuable, pro-competitive tools that are currently used by unaffiliated ISPs.

Second, we noted that these successful principles should be retained even if the Commission alters current tariff requirements. We addressed the November 15, 2002 and November 26, 2002 *ex parte* letters filed by SBC and stressed the importance of ensuring

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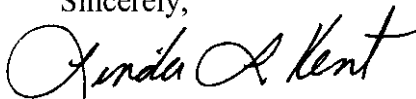
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nondiscrimination between BOC affiliated and nonaffiliated ISPs. We urged the Commission to provide explicit guidance maintaining the core principles, specifying the services to which they would apply and ensuring that rates, terms **and** conditions available to affiliated ISPs will continue to be publicly accessible and available to unaffiliated ISPs.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record in the above-captioned proceeding. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

cc: Marsha MacBride
Chris Libertelli